

No. 9/5/84-6 Lab./9302.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workmen and the management of M/s. Bishwa Nath Industries Limited, 14th Mile Stone, Mathura Road, Faridabad:—

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 312 of 1985.

Between

THE MANAGEMENT OF M/S. BISHWA NATH INDUSTRIES LIMITED, 14TH MILE STONE, MATHURA
ROAD, FARIDABAD AND ITS WORKMEN

Present:—

Shri R.N. Roy for the workmen.

None for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the Management of M/s. Bishwa Nath Industries Limited 14th Mile Stone, Mathura Road, Faridabad, to this Tribunal for adjudication:—

Whether the workmen are entitled to the grant of bonus for the period from 1st January, 1971 to 31st December, 1974? If so, with what details?

2. It may be mentioned that on 9th April, 1980, the then learned Presiding Officer, Industrial Tribunal, gave the award that the workmen were entitled to the grant of bonus for the period 1st January, 1971 to 30th June, 1974 at the rate of 8.33% because on 2nd May, 1978 it was held that financial year of the respondent Company was from 1st July to 30th June.

3. The Management had filed a writ petition in the Hon'ble High Court and the case was remanded on 20th July, 1982 for deciding the reference afresh.

4. On remand, the claimants filed an amended claim statement, dated 27th August, 1982, in which it was alleged that the respondent establishment was engaged in manufacturing and repairing of air conditioning machines and parts and was employing 75 workmen, out of whom 67 workers were members of the Mercantile Employees Association. It was further alleged that the respondent Management was incorporated in the year 1960 and that the present factory came into production in 1960 at 17th Telatola Road, Calcutta and was in continuous production there upto 1971 when the factory was shifted to Faridabad in the present place and was covered by the Payment of Bonus Act, 1965. It was alleged that the workers were entitled to bonus for the period 1st January, 1971 to 30th June, 1975, covering the period 1st January, 1971 to 31st December, 1974. It was further alleged that there was profit in the balance sheets of the company during this period and as such the workers were entitled to bonus at the rate of 20%.

5. The Management in their amended written statement dated 10th November, 1984 pleaded that the financial year of the Company was from 1st July to 30th June and as such, the reference of the dispute of bonus from 1st July, 1974 to 31st December, 1974 was pre-mature as the financial year had not ended. It was further pleaded that factory was a new establishment having started its production in March, 1974 and was covered under Section 16 read with section 3 of the Payment of Bonus Act by reasons of its running in losses and being in its infancy period. It was pleaded that the company was incorporated on 11th March, 1960 under the provisions of Indian Companies Act, 1956, started trading business and prepared separate balance sheets and profit and loss accounts. It was further pleaded that respondent was not liable to pay any bonus to its workers.

6. The claimants in their rejoinder, dated 11th December, 1984, reiterated pleas taken in the amended claim statement.

7. It may be mentioned that additional issues were framed on 11th December, 1984 and the claimants examined one witness on 4th April, 1985 and closed their evidence, when the case was fixed for evidence of the management. Ultimately, none appeared on behalf of the Management on 25th September, 1985 and as such *ex parte* proceedings were ordered against them.

8. WW-2 Shri Ram Charan stated that he was employed in the respondent factory in 1971 and worked there for about 8 years and seven months. He further stated that the factory of M/s. Bishwanath Industries Ltd., was previously in Calcutta at No. 13, Tara Tala Road and was shifted from Calcutta to Faridabad when about 12 workers also came to Faridabad, namely, Saryhshri Ram Lakan, Maha Dev, R.N. Dass, B.K. Dass etc. He

further stated that he was told that the respondent factory was set up in Calcutta in 1960 and that the production was started in 1960. As already mentioned above, the management has not cared to adduce evidence and *ex parte* proceedings were ordered against them, due to their absence on 25th September, 1985.

9. The testimony of WW-2 Shri Ram Charan, which is unrebutted, is to the effect that the respondent factory was shifted from Calcutta to Faridabad in the year 1971 and at Calcutta this factory was in production since 1960. This witness has mentioned the names of some workers, who came from Calcutta, when the factory was shifted from that place.

10. It may be mentioned that before remand, the Management had examined MW-1 Shri P.D. Khajanchi Accountant who stated that the factory was running at Faridabad since March, 1971, and that the same had been sold to other persons but no sale deed was produced by the Management. This witness nowhere stated that the factory was a separate unit and was not shifted from Calcutta. The memorandum and articles of Association Ex. M-5 show that the Bishwanath Industries Ltd., was incorporated in March, 1960, at Calcutta. The balance sheets Ex. M-1 to M 4 were produced by this Management. The document Ex. M-1 for 1971 shows that no fresh machinery was purchased by the management for running the factory. It was argued by the representative of claimants that old machinery from Calcutta was brought when the factory was shifted from Calcutta to Faridabad in 1971. As already mentioned above, MW-1 Shri P.D. Khazanchi nowhere stated that the Faridabad unit was separate one. On the other hand, the workmen have led their evidence which is unrebutted to the effect that the Calcutta factory was shifted to Faridabad in 1971. As such the unrebutted testimony of the claimants goes to show that Faridabad factory is the same which was previously being run at Calcutta and was shifted to Faridabad in 1971 and since the Calcutta factory was in production since 1960, therefore it is not exempted from the payment of bonus to the workmen during the period 1st July, 1971 to 30th June, 1974. In the ruling reported as *Asla Publishing House, (Private) Ltd., and Its Workmen*, 1966 -I-L-L-J. page 721, it is laid down that since the establishment was not a newly set up establishment as contemplated by Section 16(1) of the Industrial Payment of Bonus Act, 1965, therefore, it was not entitled to exemption provided by Section 16 and that the workmen were entitled to minimum bonus. In the present case, there is no evidence from the workers side that the respondent earned any profit during the relevant period and as such the claimants are entitled to bonus at the minimum rate of 8.33% during the period 1st July, 1971 to 30th June, 1974. The award is passed accordingly.

R. N. BATRA,

Dated 17th October, 1985.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 876, dated 17th October, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab./9303.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workmen and the management of M/s Sovrin Knit Works, 20/4, Mathura Road, Faridabad :—

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD.

Reference Nos. 274 to 281/1982

Between

SMT. MAYA, BURPHI, ANGOORI, SHANTI DEVI, PHULAWATI, ANAR DEVI, JEET KAUR AND SMT. SHEELA DEVI AND THE MANAGEMENT OF M/S SOVRIN KNIT WORKS, 20/4 MATHURA ROAD, FARIDABAD.

Present:—

Shri S.S. Gupta for the workmen.

Shri S.L. Gupta for the management.

AWARD

This award would dispose of 8 consolidated references bearing Nos. (1) 274/1982 (Smt. Maya *V/s* Sovrin Knit Works), (2) 275/1982 (Smt. Burphi *Versus* Sovrin Knit Works) (3) 276/1982 (Smt. Angoori *Versus* Sovrin Knit Works) (4) 277/1982 (Smt. Shanti *Versus* Sovrin Knit Works), (5) 278/1982 (Smt. Phulawati *Versus* Sovrin Knit Works), (6) 279/1982 (Smt. Anar Devi *Versus* Sovrin Knit Works), (7) 280/1982 (Smt. Jeet Kaur *Versus* Sovrin Knit Works) and (8) 281/1982 (Smt. Sheela Devi *Versus* Sovrin Knit Works.) The main proceedings have been held in reference No. 274/1982.

2. In exercise of the powers conferred by clause.(d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following Dispute between Smt. Maya, Burphi, Angoori, Shanti Devi, Phulawati, Anar Devi, Jeet Kaur and Smt. Sheela Devi and the Management of Sovrin Knit Works, 20/4, Mathura Road, Faridabad, to this Tribunal for adjudication :—

Whether the termination of service of Smt. Maya, Burphi, Angoori, Shanti Devi, Phulawati, Anar Devi, Jeet Kaur and Smt. Sheela Devi was justified and in order ? If not, to what relief are they entitled to ?

3. Notices were issued to both the parties. The facts given in the demand notice of the claimants are almost the same except the date of joining service, which has been described as January, 1981, January, 1980, January, 1979, January, 1979, January 1979, 1980, January, 1978 and January, 1979 references Nos. 274 to 281 of 1982, respectively. It was alleged that the claimants were working against permanent posts of helpers (thread cutting), but on 15th January, 1982 their services were terminated illegally by stopping them at the gate of the factory which amounted to retrenchment. It was, therefore, prayed that the claimants be reinstated with full back wages.

4. The Management in its written statement dated 12th October, 1982 pleaded that the claimants were not in service of the respondent Management. It was further pleaded that the respondent-Management was engaged in the export of garments and that the tailoring and other incidental work were being taken through Contractors who engaged their own labour. It was further pleaded that the ancillary process to the tailoring was the removal of superfluous threads from the garments which work was also entrusted to the Contractors. It was further pleaded that M/s. B.S. Finishers were the contractors for this job, who remained with the respondent-Management from 21st December, 1981 to 16th February, 1982 and that the respondent-Management being principal employer were exercising the control over the Contractor to the extent that the workers employed by the contractors were paid and that all statutory obligations under the Labour Laws were discharged by the contractors. It was further pleaded that claimants were employed by the contractors B.S. Finishers as casual workers for removal of superfluous threads on casual basis from 21st December, 1981 to 16th February, 1982 and were paid wages for the period they worked and that the contractors B.S. Finishers had ceased to be the Contractors of the respondent-Management.

5. The claimants in their rejoinder dated 3rd November, 1982 reiterated the plea taken in the demand notice.

6. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the claimants were the employees of the Management as Pleaded ? OPW.
- (2) Whether the workmen have settled their dispute with the Management, as pleaded ? OPM
- (3) Whether the claimants were employed by the respondent Contractors M/s. B.S. Finishers as workers as pleaded ? OPM
- (4) Whether the termination of services of the claimants was justified and in order ? If not, to what relief are they entitled ?

7. The Management has examined two witnesses and documents Ex. M-1 to M-43 have been tendered into evidence. The claimants have examined three witnesses. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

Issue No. 1 and 3 :

8. It may be mentioned that on 31st August, 1984, the representative of the Management stated that he did not want to contest Issue No. 1 because by filing the documents regarding settlement the relationship between the claimants and the management did not remain in dispute. Issue No. 1 has thus been conceded by the Management. It is held that all the claimants were the employees of the Management. Issue No. 1 is decided in favour of the claimants.

9. In view of the above discussion of issue No.1, issue No.3 does not arise for determination because the claimants were the employees of the Management and not of M/s B.S. Finishers (Contractors) and further

the Management has not produced any agreement between M/s B.S. Finishers and the Management, consequently issue No. 3 is decided against the Management.

Issue No. 2 :

10. The Management has examined MW-1 Shri Youdhister Raj, Manager of the respondent, who stated that they manufactured readymade garments and also took the job, of dyeing, embroidery etc. He further stated that in garment stitching, there were loose threads, which had to be removed and for that purpose, the casual workers were employed by them through the contractors (M/s B.S. Finishers). He further stated that the claimants were the casual helpers having served 1½ months only and that the contract came to an end on 16th February, 1982. He further stated that the payments were made to some workers, but the contractor had received full and final payment from the Management. He also stated that some female workers, who were not available at that time, were paid the amount on behalf of the contractor, —*vide* payment sheets Ex. M-1 and M-2. He further stated that after making these references by the Government, the Union and concerned claimants approached the Management for settlement and that the claimants were paid their dues by the respondent-Management on behalf of the contractor on 2nd May, 1983, —*vide* payment receipt Ex. M-3 and that the claimants were fully satisfied on receipt of amount and they gave in writing the letters, Ex. M-4 to M-11, which were executed by the claimants in his presence and they thumb-marked and signed the same in his presence. He further stated that these documents were also signed by Shri Lallan Singh, General secretary of the Union. He also stated that Shri Jai Pal Singh was the President of the Union at that time and that Ex. M-12 and M-13 were the affidavits of Shri Jai Pal Singh and Sh. Lalan Singh and that he identified their signatures. He further stated that no dispute was now left between the parties. MW-2 Shri Som Nath Aggarwal, Handwriting and Finger Print Expert stated that he had compared the disputed thumb impressions of seven claimants on documents Ex. M-4 to M-8, M-10 and M-11, and disputed signatures of 8th claimant namely Smt. Anar Devi on Ex. M-9 with the specimen thumb-impressions signatures and had prepared the enlarged photographs Ex. M-14 to M-22 and that their negatives were Ex. M-33 to M-42 and that his report was Ex. M-43. The expert opined that the disputed thumb-impressions/signatures tallied with the sample thumb-impressions/signatures of the claimants.

11. The claimants have examined WW-1 Smt. Shanti who stated that she was employed about 3½ years prior to giving the demand notice and that the other claimants were employed during those days. She further stated that she was doing job of sewing, buttoning, packing and removing threads from the readymade garments. She further stated that Sarvshri Kishan and Bhalla used to look after their work, who were employed in the respondent factory. She further stated that their signatures were obtained on the documents/papers, when wages were disbursed to them and that her attendance was marked at the gate of the factory. She further stated that she was turned out about 3 years ago and that they did not go to the Union or the proprietor of the mills for settlement after termination of their services and that no amount was paid to them by the Management on the basis of the alleged settlement. He further stated that no compensation was paid to them when their services were terminated and that all the claimants were turned out on the same date. WW-2 Smt. Sheela claimant stated that she served in the respondent factory for about 3½ years and performed the job of packing, buttoning and thread removing and that Sarvshri Kishan and Bhalla used to look after their work. She further stated that their signatures were not obtained, when the attendance was marked and that no wage slip was given to them. She also stated that she did not sign any document regarding settlement with the Management after termination of her services. She also stated that she did not know Shri Lalan Singh and did not sign any document in his presence. She also stated that the other claimants used to work along with her and that their jobs were the same. She further stated that no compensation was paid to them. When they were turned out for the last more than three years. WW-3 Shri Aktar Hussain stated that there was a Union of the name and style of Sovrin Knit Employees Union. It was affiliated with INTUC and Shri Balbir Singh used to look after the affairs of the Union. He further stated that he was General Secretary of the Union since 1983 and prior to him Shri Lalan Singh was the General Secretary. He then stated that the job of thread removing from the readymade garments was got done by the Management from the permanent as well as casual workers and that these jobs were not got done through any contractor. He also stated that he knew all the claimants who never came to their Union for settlement with the Management and that he was working in the respondent Mills since 1977. He further stated that the claimants were employed during the years 1977/1978 in export Division of the respondent Mills and Shri K.L. Malik and Shri A.K. Bhalla were the Supervisors in exports Division. He also stated that Mr. Jai Pal Singh was the president and Shri Lalan Singh was the General Secretary on 2nd May, 1983 and working in the respondent Mills even now. He further stated that the documents Ex. M-4 to M-11 did not bear the signatures of Shri Lallan Singh. He further stated that the claimants were working since a long time, but he did not know whether they were permanent or casual workers and that no wage slip and attendance card or E.S.I. Card was given to causal workers and that no provident fund was deducted.

12. The case of the Management is that the settlement was arrived at between the claimants and the Management on 2nd May, 1983 when the amount was paid to them. The case of the claimants on the other hand is that no such settlement took place between them and the Management and that no such amount on the basis of alleged settlement was received by them from the management. Firstly, the documents Ex. M-4 to M-11 dated 2nd May, 1983 are alleged to have been signed by Shri Lalan Singh General Secretary of Union.

The affidavit Ex. M-13 is also alleged to have been signed by him while the affidavit Ex. M-12 by Shri Jai Pal Singh, President of the Union. Neither Shri Lalan Singh nor Shri Jai Pal Singh have been produced by the Management to depose that these documents were signed by them and also by the claimants in their presence. Both these persons are still working in the respondent mills and, consequently, it was not difficult for the management to produce them in the witness-box. The failure of the Management to produce these witnesses in evidence goes against the Management. **Secondly** WW-3 Shri Akhtar Hussain, General Secretary of the Union, stated that he was working in the respondent Mills since 1977 and that the documents Ex. M-4 to M-11, do not bear the signatures of Shri Lalan Singh. He further stated that the claimants never came to the union for settlement with the Management. He has also deposed that the claimants were working in the respondent mills since long time. The claimants have deposed that they were working in the respondent mills for the last more than one year, when their services were terminated. Consequently the claimants were temporary workers because there is no evidence that they had been confirmed. **Thirdly**, in the documents Ex. M-4 to M-11, it is nowhere mentioned that any specific amount was received by any claimant. If any claimant had received the specific amount, then the same must have been mentioned in these documents. **Fourthly**, the documents Ex. M-4 to M-11, do not bear the signatures of the Management. The expression 'Settlement' has been defined in Section 2(p) of the Industrial Disputes Act, 1947, according to which the settlement means a settlement arrived at in course of conciliation proceedings and includes a written agreement between the employer and the workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an Officer authorised in this behalf by the appropriate Government and the Conciliation Officer. Rule 58(4) of the Industrial Disputes Act (Central) Rules, 1954, lays down that where the settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Government etc. In the ruling reported as **The Jhagakhan Collieries (P) Ltd v. G.C. Agrawal Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur and others**, 1975-Lab., I.C. 137, it is laid down that the settlement must satisfy the requirements of Section 2(p) of the Industrial Disputes Act, 1947. In the present case the documents, Ex. M-4 to M-11, having not been signed by the Management do not fall within the definition of settlement as defined in Section 2(p) of the Industrial Disputes Act. **Fifthly**, MW-1 Shri Youdhister Raj stated in cross-examination that the documents Ex. M-4 to M-11 were described by Mr. Yadav Time Office Incharge. Mr. Yadav who was a material witness, has not been produced by the Management to prove these documents. **Sixthly**, the claimants had worked for more than one year with the Management and if any settlement had been arrived at between the parties, then the claimants must have been paid their dues in accordance with law. The document Ex. M-2 shows that a sum of Rs. 937.00 was alleged to have been paid to all the 8 claimants for the period 1st January, 1982 to 21st January, 1982, which means that the share of one claimant came to Rs. 117. The claimants were entitled to notice pay, compensation and other dues and if they had entered into any settlement, they must have received all the dues from the Management. In the document Ex M-3 alleged thumb-impressions do not bear the names of any claimant. **Seventhly**, the expert has been produced who deposed that he examined the documents Ex. M-4 to M-11. He did not examine the document Ex. M-3 which was most material document to show that any amount was actually received by any claimant. The thumb-impressions/signatures on the document Ex M-3 have thus not been compared by the Expert. Moreover, the documents Ex. M-4 to M-11 could not be properly compared by the expert because the names of the claimants have been mentioned in the middle portion of the thumb-impressions. If the names had been mentioned separately then it would have been possible for the expert to compare the disputed thumb-impressions with the specimen thumb-impressions. As such the expert evidence does not help the Management, especially when the claimants have denied having thumb-marked/signed these documents. **Eighthly**, MW-1 Shri Youdhister Raj stated that the amount was paid by Mr. Khandewal Cashier of the factory. Shri Khandewal has not been produced by the Management to prove the payment to the claimants as described in the document Ex. M-3. **Ninthly**, the Management has been changing its position because the written statement, it was pleaded that there was no relationship of employer and employees between the claimants and the Management and that the claimants were employed by M/s B.S. Finishers Contractor who had paid the wages to the claimants for the period they had worked. Later on, the Management admitted that there was relationship of employer and employee between the parties as already mentioned above. **Tenthly**, MW-1 Shri Youdhister Raj stated in cross-examination that affidavits Ex. M-12 and M-13 were not attested before him. Consequently, these affidavits have not been proved by any official of the Management regarding alleged settlement between the claimants and the management.

13. Under all these circumstances, the Management has failed to prove that the alleged settlement took place between the claimants and the Management and that they received the amount in full and final settlement of their claims. The issue is decided accordingly against the Management.

Issue No. 4.

14. The claimants were not given notice pay or compensation when their services were terminated even though they have rendered service exceeding one year, as mentioned above. Consequently, the provisions of section 25-F of the Industrial Disputes Act, 1947 have not been complied with. In the ruling reported as **Santosh Gupt versus State Bank of Patiala**, 1980-II-LLJ, page 73, it is laid down that where the provisions of section 25-F of the Industrial Disputes Act, 1947, were not complied with, the workmen were entitled to reinstatement with full back wages. Under all these circumstances, all the 8 claimants are entitled to be reinstated with full back wages. The award is passed accordingly.

Dated 17th October, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 817, dated 17th October, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 8th November, 1985.

No. 9/5/84-6Lab./9213.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s (i) Managing Director, Haryana State Federation Consumers Co-operative, Wholesale Store Ltd., Chandigarh; (ii) Distt. Manager, Confed, Rohak :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 102 of 83
between

SHRI RAMESH WORKMAN AND THE MANAGEMENT OF M/S. (I) MANAGING DIRECTOR,
HARYANA STATE FEDERATION CONSUMERS CO-OPERATIVE WHOLE-SALE STORES LTD.,
CHANDIGARH (II) DISTT. MANAGER, CONFED, ROHTAK.

Shri S. N. Vats, A.R. for the workman.

Shri M. C. Bhardwaj, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Ramesh and the management of M/s. (i) Managing Director, Haryana State Federation Consumers Co-operative Wholesale Stores Ltd., Chandigarh. (ii) Distt. Manager, Confed, Rohtak, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/31154-59 dated 1st July, 1983 :—

Whether the termination of service of Shri Ramesh was justified in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as a Salesman since 28th January, 1981 on monthly wages of Rs. 350 and that the respondent did not allow him to resume his duties on 24th August, 1982 and in this way illegally terminated his services and that the said order of termination is illegal and liable to be set aside, because the same was passed in gross violation of the provisions of section 25F of the Industrial Disputes Act, 1947.●

3. In the reply filed by the respondent, various preliminary pleas were taken. The same are that the reference is bad in law and that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that the workman could choose the more efficacious remedy of appeal against the order of termination with the Registrar, Co-operative Societies and that the services of the workman were terminated in accordance with the terms and conditions of his employment.

4. On the pleadings of the parties, the following issues were settled for decision by me on 3rd October, 1984:—

1. Whether the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947?
2. Whether the reference is bad in law?
3. Whether the termination of service of Shri Ramesh was justified and in order? If not, to what relief is he entitled?

5. The workman appeared as his own witness as WW-1 and the management examined its Local Assistant Manager Shri Ram Dhan as MW-1.

6. Parties heard. My findings on the issues framed are as below :—

Issue No. 1:

7. On this issue no arguments were addressed on behalf of the respondent, because the respondent is admittedly an "industry" as defined in section 2(j) of the said Act. So, this issue is answered against the management.

Issue No. 2:

8. No arguments were addressed on this issue, so the same is answered against the management.

Issue No. 3:

9. On this issue the learned Authorised Representative of the respondent Shri Bhardwaj (who himself once adorned the Chair of Presiding Officer, Industrial Tribunal, Haryana), raised a faint plea that since the petitioner was an *ad hoc* employee, as per the terms and conditions of his letter of appointment, his services could be dispensed with at any time without assigning any reason and so the petitioner cannot challenge the order of termination. In my opinion, this contention is misconceived because any stipulation in the letter of appointment which contravenes the provisions of the Act can have no binding force. It was further argued by him that since the petitioner was guilty of embezzling a sum of Rs. 4097.22, so also his termination was justified. Even if, it be admitted, that there was a shortage of goods worth Rs. 4097.22 in the charge of the petitioner when any physical checking was conducted, even then, the respondent could not have terminated his services without holding a proper domestic probe into the same. But admittedly no such domestic enquiry was held by the respondent. So, the order of termination runs counter to the provisions of section 25 F of the Act as the workman was not given any prior notice of termination or retrenchment, compensation as envisaged in section 25F of the said Act. So, the order of termination is illegal and the same is set aside.

10. The services of the workman were terminated on 24th August, 1982 and the demand notice appended with the order of reference is dated 20th September, 1982. So, the present dispute was raised by the workman within one month of his termination and as such, he cannot be denied the benefits of back wages. So, the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated 28th August, 1985.

B. P. JINDAL

Presiding Officer,
Labour Court, Rohtak.

Endst No. 102-83/1620 dated 11th October, 1985.

Forwarded four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6lab/9214.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s. (i) The District Manager Confed Rohtak (ii) The Haryana State Federation of Consumers Co-operative Wholesale Store Ltd., Chandigarh: —

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 65 of 1983.

Between

SHRI ROSHAN LAL, WORKMAN AND THE MANAGEMENT OF THE DISTRICT MANAGER CONFED ROTAK. (ii) THE HARYANA STATE FEDERATION OF CONSUMERS CO-OPERATIVE WHOLE SALE STORE LTD., CHANDIGARH.

Present:—

Shri S.N. Vats, A.R., for the workman.

Shri M.C. Bhardwaj, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Roshan Lal and the management of The District Manager Confed Rohtak. (ii) The Haryana State Federation of Consumers Co-operative Wholesale Store Ltd., Chandigarh, to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. ID/RTK/76-83/23041—47, dated 17th May, 1983:—

Whether the termination of service of Shri Roshan Lal was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was employed with the respondent as a Salesman since 28th January, 1981 on monthly wages of Rs. 350 and that the respondent did not allow to resume his duties on 4th September, 1982 and in this way illegally terminated his services and that the said order of termination is illegal and liable to be set aside, because the same was passed in gross violation of the provisions of section 25F of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, various preliminary pleas were taken. The same are that the reference is bad in law and that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that the workman could choose more efficacious remedy of appeal against the order of termination with the Registrar Co-operative Societies and that the services of the workman were terminated in accordance with the terms and conditions of his employment.

4. On the pleadings of the parties, the following issues were settled for decision by me on 3rd October, 1984:—

1. Whether the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947?

2. Whether the reference is bad in law?

3. Whether the termination of service of Shri Roshan Lal was justified and in order? If not, to what relief is he entitled?

5. The workman appeared as his own witness as WW-1 and the management examined its Local Assistant Manager Shri Ram Dhan as MW-1.

6. Parties heard. My findings on the issues framed are as below:—

Issue No. 1:

7. On this issue no arguments were addressed on behalf of the respondent, because the respondent is admittedly an "industry" as defined in section 2(j) of the said Act. So, this issue is answered against the management.

Issue No. 2:

8. No arguments were addressed on this issue, so the same is answered against the management.

Issue No. 3:

9. On this issue the learned Authorised Representative of the respondent Shri Bhardwaj (who himself once adorned the Chair of Presiding Officer, Industrial Tribunal Haryana) raised a faint plea that since the petitioner was an *ad hoc* employee, as per the terms and conditions of his letter of appointment, his services could be dispensed with at any time without assigning any reason and so the petitioner cannot challenge the order of termination. In my opinion, this contention is misconceived, because any stipulation in the letter of appointment which contravenes the provisions of the Act can have no binding force. It was further argued by him that since the petitioner was guilty of embezzling a sum of Rs. 2150.57, so also his termination was justified. Even if, it be admitted, that there was a shortage of goods worth Rs. 2,150.57 in the charge of the petitioner when any physical checking was conducted, even then, the respondent could not have terminated his services without holding a proper domestic probe into the same. But admittedly no such domestic enquiry was held by the respondent. So, the order of termination runs counter to the provisions of section 25F of the Act as the workman was not given any prior notice of termination or retrenchment compensation as envisaged in section 25F of the said Act. So, the order of termination is illegal and the same is set aside.

10. The services of the workman were terminated on 4th September, 1982 and the demand notice appended with the order of reference is dated 20th September, 1982. So, the present dispute was raised by the workman after 16 days of his termination and as such, he cannot be denied the benefits of back wages. So, the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 28th August, 1985.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 65-83/1621, dated 11th October, 1985.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.